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7 Attorneys for the Arizona State Board of Pharmacy

8  
9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of

11 **MARILYN MYERS, Pharmacist**

12  
13 Holder of License No. S006882  
14 As a Pharmacist  
In the State of Arizona

Board Case No. 16-0024-PHR

**CONSENT AGREEMENT  
FOR CIVIL PENALTY AND  
CONTINUING EDUCATION**

15  
16 In the interest of a prompt and judicious settlement of this case, consistent with the  
17 public interest, statutory requirements and the responsibilities of the Arizona State Board  
18 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Marilyn Myers, R.Ph.  
19 ("Respondent"), holder of Pharmacist License S006882 in the State of Arizona, and the  
20 Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order  
21 ("Consent Agreement") as a final disposition of this matter.

22 **RECITALS**

23 1. Respondent has read and understands this Consent Agreement and has had  
24 the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
25 opportunity to discuss this Consent Agreement with an attorney.  
26

1           2.     Respondent understands that she has a right to a public administrative  
2 hearing concerning this matter at which hearing she could present evidence and cross  
3 examine witnesses. By entering into this Consent Agreement, Respondent knowingly  
4 and voluntarily relinquishes all right to such an administrative hearing, as well as rights  
5 of rehearing, review, reconsideration, appeal, judicial review or any other administrative  
6 and/or judicial action, concerning the matters set forth herein.

7           3.     Respondent affirmatively agrees that this Consent Agreement shall be  
8 irrevocable.

9           4.     Respondent understands that this Consent Agreement or any part of the  
10 agreement may be considered in any future disciplinary action by the Board against her.

11          5.     Respondent understands this Consent Agreement deals with Board  
12 complaint number 4469 involving allegations of unprofessional conduct against  
13 Respondent. The investigation into these allegations against Respondent shall be  
14 concluded upon the Board's adoption of this Consent Agreement and Respondent's  
15 compliance with the same.

16          6.     Respondent understands that this Consent Agreement does not constitute a  
17 dismissal or resolution of any other matters currently pending before the Board, if any,  
18 and does not constitute any waiver, express or implied, of the Board's statutory authority  
19 or jurisdiction regarding any other pending or future investigation, action or proceeding.

20          7.     Respondent also understands that acceptance of this Consent Agreement  
21 does not preclude any other agency, subdivision, or officer of this State from instituting  
22 any other civil or criminal proceedings with respect to the conduct that is the subject of  
23 this Consent Agreement.

24          8.     Respondent acknowledges and agrees that, upon signing this Consent  
25 Agreement and returning this document to the Board's Executive Director, she may not  
26

1 revoke her acceptance of the Consent Agreement or make any modifications to the  
2 document regardless of whether the Consent Agreement has been signed by the  
3 Executive Director. Any modification to this original document is ineffective and void  
4 unless mutually agreed by the parties in writing.

5       9.     This Consent Agreement is subject to the approval of the Board and is  
6 effective only when accepted by the Board and signed by the Executive Director. In the  
7 event that the Board does not approve this Consent Agreement, it is withdrawn and shall  
8 be of no evidentiary value and shall not be relied upon nor introduced in any action by  
9 any party, except that the parties agree that should the Board reject this Consent  
10 Agreement and this case proceeds to hearing, Respondent shall assert no claim that the  
11 Board was prejudiced by its review and discussion of this document or any records  
12 relating thereto.

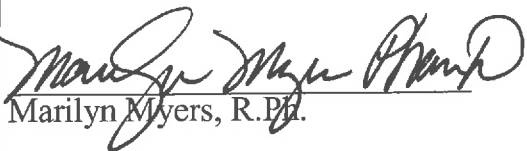
13       10.    If a court of competent jurisdiction rules that any part of this Consent  
14 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
15 shall remain in full force and effect.

16       11.    Respondent understands that this Consent Agreement is a public record that  
17 may be publicly disseminated as a formal action of the Board and may be reported as  
18 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
19 Protection Data Bank.

20       12.    Respondent understands that any violation of this Consent Agreement  
21 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-  
22 1901.01(B)(20), -1927(A) (1).

23       13.    Respondent agrees that the Board will adopt the following Findings of Fact,  
24 Conclusions of Law and Order.

1 ACCEPTED AND AGREED BY RESPONDENT

2   
3 Marilyn Myers, R.Ph.

Dated: 10.29.16

4 **FINDINGS OF FACT**

5 1. The Board is the duly constituted authority for licensing and regulating the  
6 practice of pharmacy in the State of Arizona.

7 2. Respondent is the holder of license number S006882 to practice as a  
8 Pharmacist in the State of Arizona.

9 3. During all relevant times to these findings, Respondent worked as work-at-  
10 home pharmacist for Walgreens Mail Service located 8350 S. River Parkway, Tempe, AZ  
11 85284.

12 4. The complaint was filed by Melodie Moore, Investigation Specialist II for  
13 the Florida Board of Pharmacy, concerning patient R.T., a Florida resident.

14 5. On or about October 22, 2014, R.T. was dispensed Morphine Sulfate with a  
15 label that read **"Take 5 to 10ml by mouth every 4 hours as needed."** However, the  
16 prescription was written for **Roxanol (Morphine) 20mg/ml, take 5-10mg by mouth**  
17 **every 4 hours as needed.** Walgreens pharmacist, Marilyn Myers , Pharmacist, who was  
18 a work-at-home pharmacist for Walgreens Mail Service, approved the incorrect dosing  
19 instructions.  
20

21 6. On or about October 24, 2014, R.T. expired with a cause of death  
22 determined to be morphine overdose.

23 7. The prescription was scanned at Walgreens Drug #6263 in Lake City, FL.  
24  
25  
26

1           8.     The prescription was data entered by CA, a technician at Walgreens Drug  
2 #6263.

3           9.     Prescription drug utilization review was completed by L.H., a pharmacist  
4 located at Walgreens' central operation in Orlando, FL during which time L.H.  
5 discovered the error (i.e. the incorrect dosing on the label). L.H. immediately called the  
6 pharmacy but there was no answer so she deleted the prescription in an effort to keep the  
7 prescription from being sold. L.H. also sent an email advising of the labeling error.

8           10.    According to Walgreens' records, the deletion of the prescription and the  
9 sale of the medication occurred simultaneously; the deletion of the prescription did not  
10 prevent the sale of the medication. The patient received the medication with the incorrect  
11 dosing directions.  
12

### 13                                   CONCLUSIONS OF LAW

14  
15           1.     The Board possesses jurisdiction over the subject matter and over  
16 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

17  
18           2.     The Board may discipline a pharmacist who has engaged in unprofessional  
19 conduct. A.R.S. § 32-1927(A) (1).

20           3.     The conduct and circumstances described above constitute a violation of  
21 Arizona Administrative Code R4-23-402(A)(10)(c), which requires that a pharmacist  
22 check prescription order data entry to ensure that the data input...communicates the  
23 prescriber's directions precisely by verifying dose, dosage form, route of administration,  
24 dosing frequency and quantity.

**ORDER**

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT Respondent shall:

1. Pay a civil penalty to the Board in the amount of **\$1,000.00** within **30 days** of the effective date of this Order; and
2. Successfully complete and provide proof of successful completion to the Board of eight (8) contact hours (0.8 C.E.U.) of American Council on Pharmaceutical Education course(s) on the topic of avoiding medication errors. The required course(s) must be completed within **90 days** of the effective date on this Order and are in addition to the required continuing education hours.
3. Respondent shall pay all costs associated with complying with this Consent Agreement.
4. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against Respondent's license. The issue at such a hearing will be limited solely to whether this Order has been violated.

DATED this 25<sup>th</sup> day of January, 2016.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By: \_\_\_\_\_

Kamlesh Gandhi  
Kamlesh Gandhi, PharmD..  
Executive Director

ORIGINAL OF THE FOREGOING FILED  
this 2<sup>nd</sup> day of February, 2016, with:

1 Arizona State Board of Pharmacy  
2 1616 W. Adams Street  
3 Phoenix, Arizona 85007

4 COPY OF THE FOREGOING MAILED  
5 BY CERTIFIED MAIL  
6 this 2<sup>nd</sup> day of February, 2016,

7 Marilyn Myers  
8 5225 N. Post Trail  
9 Tucson, AZ 85750

10 COPY OF THE FOREGOING MAILED  
11 this 2<sup>nd</sup> day of February, 2016, to:

12 Jeanne M. Galvin  
13 Assistant Attorney General  
14 1275 W. Washington Street, SGD/LES  
15 Phoenix, Arizona 85007  
16 Attorney for the Board

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